



[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[TD 9646]

RIN 1545-BL93

Authority for Voluntary Withholding on Other Payments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations under the Internal Revenue Code (Code) relating to voluntary withholding agreements. The regulations allow the Secretary to issue guidance in the Internal Revenue Bulletin to describe payments for which the Secretary finds that income tax withholding under a voluntary withholding agreement would be appropriate. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**. These temporary regulations affect persons making and persons receiving payments for which the IRS issues subsequent guidance authorizing the parties to enter into voluntary withholding agreements.

DATES: Effective Date: These regulations are effective on **[INSERT DATE THIS DOCUMENT IS FILED FOR PUBLIC INSPECTION BY THE FEDERAL REGISTER]**.

Applicability date: For date of applicability, see §31.3402(p)-1T(d).

FOR FURTHER INFORMATION CONTACT: Linda L. Conway-Hataloski at (202) 317-6798 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### **Background**

Section 3402(p) allows for voluntary income tax withholding agreements. Section 3402(p)(3) authorizes the Secretary to provide regulations for withholding from (A) remuneration for services performed by an employee for the employee's employer which does not constitute wages, and (B) from any other payment with respect to which the Secretary finds that withholding would be appropriate, if the employer and employee, or the person making and the person receiving such other type of payment, agree to such withholding. Section 3402(p)(3) also authorizes the Secretary to prescribe in regulations the form and manner of such agreement. Section 31.3402(p)-1 of the Employment Tax Regulations describes how an employer and an employee may enter into an income tax withholding agreement under section 3402(p) for amounts that are excepted from the definition of wages in section 3401(a).

##### **Explanation of Provisions**

These temporary regulations under section 31.3402(p)-1T allow the Secretary to describe other payments subject to voluntary withholding agreements in guidance to be published in the Internal Revenue Bulletin (IRB). The temporary regulations also provide that the IRB guidance will set forth requirements regarding the form and duration of the voluntary withholding agreement specific to the type of payment from which withholding is authorized.

Expanding the use of voluntary withholding agreements to payments designated by the Secretary as eligible for voluntary withholding will permit taxpayers to use the withholding regime (rather than the estimated tax payment process) to meet their tax payment obligations on a timely basis, minimize the risk of underpayment of taxes, and achieve administrative simplification for taxpayers and the IRS.

### **Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the cross-reference notice of proposed rulemaking published elsewhere in this **Federal Register**. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

### **Drafting Information**

The principal author of these regulations is Linda L. Conway-Hataloski, Office of Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

### **List of Subjects in 26 CFR Part 31**

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

## **Adoption of Amendments to the Regulations**

Accordingly, 26 CFR part 31 is amended as follows:

### **PART 31--EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE**

Paragraph 1. The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 2. §31.3402(p)-1T is added to read as follows:

#### **§31.3402(p)-1T Voluntary Withholding Agreements (temporary).**

(a)-(b) [Reserved] For further guidance, see §31.3402(p)-1(a) and (b).

(c) Other payments. The Secretary may issue guidance by publication in the Internal Revenue Bulletin (IRB) (which will be available at [www.irs.gov](http://www.irs.gov)) describing other payments for which withholding under a voluntary withholding agreement would be appropriate and authorizing payors to agree to withhold income tax on such payments if requested by the payee. Requirements regarding the form and duration of voluntary withholding agreements authorized by this paragraph (c) will be provided in the IRB guidance issued regarding specific types of payments.

(d) Effective/applicability date. (1) This section applies on and after **[INSERT DATE THIS DOCUMENT IS FILED WITH THE FEDERAL REGISTER]**.

(2) The applicability of this section expires on **[INSERT DATE THAT IS 3 YEARS AFTER THE DATE THIS DOCUMENT IS PUBLISHED IN THE FEDERAL REGISTER]**.

John Dalrymple

Deputy Commissioner for Services and Enforcement.

Approved: November 21, 2013

Mark J. Mazur

Assistant Secretary of the Treasury (Tax Policy).

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